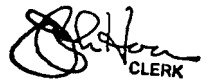


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
SEP 09 2009

CLERK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ANTONIO DIAZ LEFT HAND BULL,

Defendant.

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CR 09-30053 (01)

ORDER AND OPINION

The defendant has filed a motion (Doc. 16) with a supporting memorandum of law (Doc. 17) to suppress statements. The government filed a response, redacted and unredacted (Docs. 21 and 22). United States Magistrate Judge Moreno conducted an evidentiary hearing on August 20, 2009. The defendant and counsel for both parties were present. I have conducted a *de novo* review of the transcript (Doc. 29) and all other documents and exhibits.

The magistrate issued a report and recommendation (Doc. 28) after announcing his bench decision (Doc. 30). The recommendation is to grant in part and deny in part the motion to suppress. The magistrate filed an addendum (Doc. 32) which the court has also considered.

The defendant filed objections (Doc. 33) dealing with the recommendation as to the suppression motion and the addendum which objections are without legal merit.

The court nevertheless expresses concern about the sloppy practice of the interviewing FBI agent in suggesting that the defendant would be responsible for obtaining an attorney when, in fact, the agent knew or should have known that counsel would be appointed by the court. The court also expresses concern about the sloppy

practice of the interviewing FBI agent in perhaps suggesting that, once an attorney had been appointed, the questioning of the defendant by the agent would continue. Such information could well be misleading but we do not know what the reaction of the defendant was in this case. In addition, these sloppy practices are not sufficient in this case to suppress the statements and the evidence. These sloppy practices should not be repeated in future cases.

The report and recommendations should be adopted, the suppression motion denied, the addendum adopted and the objections overruled.

Now, therefore,

IT IS ORDERED, as follows:

- 1) The motion (Doc. 16) to suppress statements of the defendant is granted to the extent it seeks to suppress defendant's statements to Officer Crow Eagle.
- 2) In all other respects, the motion is denied.
- 3) The report and recommendation (Doc. 28) is adopted.
- 3) The objections (Doc. 33) of the defendant to the report and recommendation and to the addendum are overruled.


Dated this 9th day of September, 2009.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:  _____
DEPUTY
(SEAL)